IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 127 of 1981

With

FIRST APPEAL No. 128 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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1. First Appeal No. 127 of 1981:

Gujarat State Road Transport Corporation : Appellant.
Versus
Minor Vandanaben, D/o. Pravinchandra Babubhai Shah & Ors. : Respondents.

2. First Appeal No. 128 of 1981:

Gujarat State Road Transport Corporation : Appellant.
Versus
Tapiben, W/o. Babulal Kisandas Shah & Ors: Respondents.

Appearance:

Mr. Pranav G. Desai, Advocate for the Appellant.
Mr. Rajni H. Mehta, Advocate for respondent No.5
Ms. Kalpana Brahmbhatt, Advocate for respondent

CORAM : MR.JUSTICE H.R.SHELAT
and
MR.JUSTICE H.H.MEHTA
Date of decision: 18/04/2000

ORAL JUDGEMENT : (Per: H.R. Shelat, J.)

These two appeals are directed against the judgment and award dated 29th February 1980 awarding the compensation less than what was prayed for.

2. Pravinchandra Babubhai who lost the life in motor accident was as alleged by the claimants plying the rickshaw during night time and during day time he was dealing in cold drinks in the name and style `Vandana Cold Drinks'. Whatever he was earning was being consumed in the maintenance of the family members. On 28th May 1978 at 10.00 A.M. carrying the passengers in the rickshaw Pravinbhai Babubhai was going from Kamrej to Surat city. Kirtikumar, his wife Pratibhaben and Kanakben, his minor daughter were the passengers in the rickshaw. When the rickshaw reached near the sign board of Village Laskana on Kamrej-Surat road, Yakubkhan Mohamedkhan, the respondent No.3 was coming from the opposite direction driving the mini luxury bus No. GTE 6020 belonging to the present appellant. He was driving the bus on the wrong side of the road at the excessive speed dangerous to the human life as a result he collided against the rickshaw, with the result Kiritkumar, Pritibhaben, & Kanakben sustained injuries and succumbed to the injuries at the spot. Pravinchandra Babubhai who was driving the rickshaw sustained injuries and succumbed to the injuries during the medical treatment in the hospital. Babubhai Kishandas Shah and Tapiben Babubhai, who are the parents of deceased Pravinchandra (rickshaw driver) preferred M.A.C.P. No. 35 of 1979 in the Motor Accident Claims Tribunal at Surat for compensation of Rs. 35,000/=, while Vandanaben, the minor daughter of Pravinkumar who was at the time of accident aged about 4 years, filed M.A.C.P. No. 36 of 1979 for compensation of Rs. 95,000/=. The Tribunal appreciating the evidence before it in all awarded Rs. 72,200/= and apportioned the same amongst the claimants of the two petitions, Rs. 34,000/= came to be awarded to the father and mother who

are the claimants in M.A.C.P. No. 35 of 1979 and Rs. 48,200/= came to be awarded to Vandanaben, the petitioner in M.A.C.P. No. 36 of 1979. The appellant, joined as opponent No.2 in both the motor accident claim petitions, feeling aggrieved by the awards passed, has preferred both these appeals.

3. As both the appeals arise out of the same judgment and award and when common questions of law and facts are raised in both the appeals, we preferred to hear both the appeals together and dispose the same of by a common judgment so as to avoid hardship to the parties, duplication of work, waste of time and conflicting judgments. Accordingly, both the appeals are heard together and by this common judgment both the appeals shall stand disposed of.

4. Assailing the judgments and award, the learned advocate for the appellant submits that the Tribunal fell into error in holding that both the drivers were equally responsible because both were negligently driving their respective vehicles. The Tribunal considering the evidence on record ought to have held the deceased Pravinbhai who was driving the rickshaw solely responsible for the accident. The bus driver was driving the bus at the moderate speed remaining on the left side of the road but as deceased Pravinbhai was driving the rickshaw at the hectic speed he could not control the rickshaw and went on the wrong side with the result he collided against the front left hand side portion of the bus and then went off the road of the northern side. The rickshaw then came to a halt in the ditch. It is also the submission that the amounts awarded are on a higher side. The income of deceased Pravinbhai assessed is also on a higher side. It ought to have been assessed less than Rs. 500/= per month.

5. It may be stated before we proceed further to deal with the contentions raised that the father and mother and also Vandanaben, the daughter of the deceased Pravinbhai have filed their cross-objections contending inter alia that the Tribunal ought to have considered the future income because by passage of time deceased Pravinbhai would have earned more and would have helped the family by contributing more than he was contributing at the time of accident. The Tribunal also ought to have considered the income he was getting from the cold drinks business. The same ought not to have been overlooked. They pray for the claim disallowed. With regard to the negligence it is also their case that the incident happened because of the sole negligence on the part of

the bus driver because the bus driver was driving the bus on the wrong side. He had gone on to the wrong side because he wanted to overtake the scooter proceeding ahead of him, but without bearing in mind the fact that the rickshaw was approaching from the opposite direction. Because of his such negligent act the incident happened for which the bus driver is solely responsible.

6. Considering the rival contentions, two points arise for our consideration, one regarding negligence, and second regarding the quantum of compensation. Firstly, we will deal with the question regarding negligence. Reading the panchnama Ex.93 which was drawn by the police during the course of the investigation after the complaint was lodged by the bus driver and also the evidence of Dr. Chandravadan Harishankar Pandya who was proceeding ahead of the bus driving his scooter, it becomes clear that the road in question is East to West in length. The total width of the road is 20 feet. On both the sides of the road, there are shoulders each having the width of about 3 feet. The bus was proceeding towards East as it was going to the Surat city. Hence the correct side of the bus was northern half of the road. The rickshaw was going towards Kamrej, i.e., towards western direction. Its correct side was therefore the southern half of the road. Reading the evidence on record, it is difficult to locate the impact point on the road and therefore we are left to have a reasonable guess work from the materials on record. It may be stated that the left hand side front portion of the bus was found damaged when the panchnama was drawn and the front part of the rickshaw was found damaged. However, the panchnama also shows that front and back portion of the rickshaw was also found damaged. It may be because the rickshaw was rolled down to the pit on the northern side of the road, but initially it seems the impact was on the front side. There is therefore two possibilities. Either the rickshaw must have gone on the wrong side because deceased Pravinbhai might have lost the control and after colliding with the left front portion of the bus the rickshaw went off the road and then rolling down came to a halt falling into the pit nearby on the northern side or the bus must have been driven on the wrong side and as the rickshaw driver found that it was difficult for him to move further to his left in order to save him and the passengers in the rickshaw, he took the right turn and while proceeding further he collided with the left hand front portion of the bus and then because of violent impact & resultant force the rickshaw went into the pit on the northern side, dashing against one or another place. Now other evidence on

record may be examined.

7. When the evidence of Manojbhai Harilal, CW 3, claimant Yakubkhan Mohmedkhan DW 1, and Dr. Chandravadan Harishanker Pandya CW 2, is perused together it appears that Dr. Chandravadan Pandya was proceeding towards the eastern side driving his scooter. He was driving remaining close to the northern border of the road. He was about 2 feet away from northern border. The bus was following him. The bus driver wanted to overtake. He therefore took the bus on the right side and then started to overtake the scooter driven by Dr. Chandravadan Pandya. As per the evidence of Dr. Chandravadan Pandya the bus driver had kept a distance of 3 feet from him on the right side when he was being overtaken. The width of the bus is 8 feet and after the overtaking was over the bus proceeded at a distance and then the incident happened, and within 5 minutes Dr. Chandravadan Pandya reached the scene of incident. From such facts, it appears that the right side of the bus at the time of overtaking the scooter must be at a distance of 13 feet from the northern border of the road meaning thereby the bus driver had gone to his right side (wrong-side) covering the area of about 3 feet. Hence 3 feet portion came to be obstructed by him for the oncoming vehicles. At that time deceased Pravinkumar was coming from the opposite direction driving the rickshaw and he collided on the left front portion of the bus. This shows that the impact point must be virtually on the middle of the road.

8. What are the duties of the driver while overtaking the vehicle proceeding ahead of him or seeing the vehicle approaching the opposite direction is the next question that arises for consideration. If the driver desires to overtake the vehicle proceeding ahead of him he has to first by any mechanical device available send a message to the driver of the vehicle proceeding ahead of him and thereby convey his intention of overtaking. He must then wait for a signal. After receiving the signal he has to proceed to overtake but bearing in mind the speed of the vehicle being overtaken and the speed at which he is required to drive. Secondly, he has to maintain reasonable distance between his vehicle and the vehicle being overtaken so as to avoid brushing and grazing. He has also to bear in mind that the space available on his right side is sufficient to pass safely and conveniently and that passage is unobstructed. If he finds that the space on the right side is sufficient but that passage is obstructed either because another vehicle is coming from the opposite

direction or because of any other reason he should not prefer to overtake even if the driver of the vehicle to be overtaken has given the signal for overtaking. In this case, Dr. Chandravadan Pandya does not say that he had received the signal or a message from the bus driver about his intention to overtake and he did not even give any signal for overtaking. It also appears that rickshaw driven by deceased Pravinkumar was at that time approaching from the opposite direction. Hence the right side passage was not clear and safe for the purpose of overtaking. However, the bus driver overlooking all his aforesaid duties preferred to overtake taking a risk thinking that he would be able to control the situation that might emerge on the road but his judgment did not come true and unfortunate incident happened. He was therefore negligent in driving the bus.

9. If the driver of the vehicle finds that the oncoming vehicle is proceeding ahead towards him overtaking the vehicle and that vehicle is on its wrong side, i.e. his correct side and it is not looking to the distance between his vehicle & oncoming vehicle safe to proceed further at the same speed, it is his duty to apply the brake and slow down the vehicle, and if required to swerve more and more on the left side to the extent possible or any other side found safe. Here in this case, Pravinkumar, the rickshaw driver committed the breach of his such duties. Seeing the bus approaching from the opposite direction which was in the process of overtaking the scooterist (Dr. Chandravadan Pandya) remaining on his correct side and realising that the bus being the obstruction it was unsafe to proceed ahead, Pravinkumar unwisely continued to proceed ahead thinking that he would be able to find the way but when he found that the mishap was going to happen he feeling puzzled, tried to avert the incident, swerving on his right side riskily instead of swerving more and more on the left side, i.e., southern side, as a result his rickshaw collided with the front left side of the bus and then it went off the road towards north. It then rolled down and came to a halt falling into the pit.

10. When in such manner the incident has happened and the impact point can be located on the middle or very close to the middle of the road, both the drivers can be said to be equally responsible for the incident. The learned Chairman of the Tribunal was, therefore, perfectly right in apportioning the negligence equally on both the drivers. We see no reason to interfere with that finding. The contention advanced in this regard on behalf of both the sides must therefore fail.

11. We shall now switch over to the another point, namely quantum of compensation fixed. It may be recollected that father, mother and daughter of deceased Pravinkumar filed abovestated two petitions for compensation. Whenever the family loses the bread-earning member and claims the compensation, the Tribunal has to assess the compensation ascertaining what was the income of the deceased, what he would have spent on him for his personal requirements, and what he was and would have contributed for the maintenance of the family and for how many years to come. The Tribunal has assessed the monthly income of the deceased at Rs. 750/= holding that there was no sufficient evidence on record to hold that deceased was also earning out of his cold drinks business. The evidence on record shows that hiring the rickshaw from the owner deceased Pravinbhai was plying the rickshaw, and out of his income he was paying the rent to the owner while remainder was his profit. Considering the evidence on record, the Tribunal reached the conclusion that net profit per day was Rs. 25/= and therefore the monthly income of the deceased was Rs. 750/=. We have carefully perused the evidence and we see no reason to disturb the said conclusion drawn by the Tribunal. When we generally agree with the reasons of the Tribunal, it is not necessary to restate the same.

12. Out of such monthly income, the deceased must be spending for himself for his requirements. The Tribunal has deducted Rs. 400/= holding that the deceased was spending the said amount for his requirement. The datum figure is therefore assessed at Rs. 350/= per month, i.e. Rs. 4,200/= per year.

13. In this regard, it is the contention of the learned advocate representing the claimants - father & mother and daughter of Pravinkumar that the Tribunal ought to have at least added Rs. 250/= more keeping in mind the income Pravinkumar was getting from the cold drinks business. His monthly income ought to have been assessed at Rs. 1,000/=. Of course, there is no evidence to hold so, but even for the sake of argument the same is considered to be the income the claimants are not going to be benefitted. The deceased must have spent for his personal requirements and when the father and mother are the claimants, ordinarily the contribution to the father and mother is taken 1/3rd of his income. If that is done, the datum figure would come to Rs. 333/-. Instead that in the case on hand the Tribunal has taken the datum figure at Rs. 350/= per month which can be considered to be just because the daughter is also one of

the dependents and even if considering that aspect, if Rs.375/= is to be taken as the datum figure per month, we see no justifiable reason to interfere with, because the difference in the datum figure is very small and if the stake is small, ordinarily the Court should not interfere, which is made by this Court clear in the case of Dy. Collector, Land Acquisition, Dharoi Canal Project, Vs. Human Savdi Rahim Khalli - 39(3) G.L.R. 2356. In this case, therefore, we would not like to interfere with the datum figure fixed by the Tribunal.

14. Deceased Pravinbhai was aged about 29. The father and mother of deceased were at the time of incident aged 59 & 51 respectively. The minor daughter, Vandanaben was at the time of incident aged about 4 year. At the age of 24 or 25 latest, Vandanaben would be marrying and would have then ceased to be the dependent. The deceased would have helped Vandanaben for about 20 years more. The mother was aged 51 years and ordinarily, considering the span of life to be of 70 years, deceased would have helped the parents at least for about 19 years. Considering such period of help, the Tribunal has rightly adopted the multiplier of 16, and we see no reason to reduce the same, as contended. If the yearly amounts of dependency are multiplied by 16, the claimants in the case on hand are entitled to Rs. 67,200/= as compensation under the head "Loss of Dependency". Over and above such amounts, they are entitled to Rs. 5,000/= considering the then prevailing rate found just and proper under the head "Loss to the estate of the deceased". In all therefore the claimants are entitled to Rs. 72,200/=. The Tribunal is therefore right in holding that Rs. 72,200/= can be awarded.

15. It is, at this stage, the contention on behalf of the claimants that when Pravinbhai died during the course of the treatment in the hospital, the Tribunal ought to have awarded reasonable amount under the head "Pain, Shock & Suffering" because Pravinbhai must have experienced pain, shock and suffering. Of course, this issue is overlooked by the Tribunal. It may be because no one had submitted in this regard, but we also, considering the materials on record,find no reason to award any thing under that head. Ordinarily, it may be mentioned that the claimants would be entitled to reasonable amount under that head,but considering the evidence of Tapiben, the mother, it is clear that she was informed on phone about the sad news on the same day. She therefore immediately rushed to Surat and went to the hospital wherefrom dead body of Pravinkumar was handed over. This shows that on the same day Pravinkumar died

during the course of the treatment. If that is so, amounts of Rs. 2,000/= to Rs. 3,000/= can be awarded under the head `Pain, Shock & Suffering', but as per the above referred decision when the stake is too small the Court should not interfere and disturb the award. The stake on hand would be too small because for the reasons hereinbelow stated 50% amounts are to be sliced down as the deceased Pravinkumar was also found negligent as discussed hereinabove. In that case, the amount would come to Rs. 1,500/= maximum and that being a small amount, we would not like to disturb the order.

16. In view of the above discussion, the claimants are entitled to Rs. 72,200/= in all, but award for the whole of the amounts found awardable cannot be passed. As discussed above,both drivers are equally responsible for the incident. Both had committed the breach of their respective duties as a result of which the incident happened. Hence 50% of the amounts will have to be sliced down. When that is done, all the three claimants are in all entitled to Rs. 36,100/=. The same are required to be apportioned so that they may not have any inter-se dispute.

17. While apportioning the amounts, the remaining period of dependency of the claimants must be the yardstick. The widow of the deceased will remain dependent for her whole life if she does not marry again while children and father & mother (if surviving) will remain dependent for some time i.e. for few years. Hence the apportionment must be in such a way so that the widow of the deceased may get double than what her children would get and the children may get double than the grandfather and grandmother. In the case on hand, the father & mother and daughter are the claimants. The wife of the deceased has not filed the petition because prior to the date of incident she was divorced. In this case,therefore, apportionment is to be made amongst the above stated three claimants. If as per the principle made clear hereinabove, apportionment is made, the father of the deceased will get Rs. 9,025/=, and the same amount the mother would get, while Vandanaben, the daughter is entitled to Rs. 18,050/=. Needless to say that on such amounts all the 3 claimants are entitled to interest and costs awarded.

18. The opponent No.4 in the petition, i.e., respondent No.5 in both the appeals has been ordered to pay Rs. 5,000/= to each of the petitions in both the petitions but being the insurer it is not liable to pay as the rickshaw driver is found negligent, and so the

amounts are sliced down to 50% for which the appellant and S.T. driver are held jointly and severally liable to pay. The award passed will have to be modified suitably. For the aforesaid reasons, the cross-objections filed by the claimants are required to be rejected, while the cross-objections filed by respondent No.5 the Insurance Company are required to be allowed. The appeals, in view of the fact, also fail, but order regarding modification of the award will have to be passed.

19. In the result, both the appeals are dismissed and cross-objections filed by the claimants, namely father, mother and daughter of deceased Pravinkumar, are also dismissed, while the cross-objections filed by respondent No.5 are partly allowed. The awards passed in both the claim petitions are modified. The appellant and opponent No.3, in First Appeal No. 128 of 1981 (opponents Nos. 1 & 2, in M.A.C.P. No. 35 of 1979) shall pay jointly and severally Rs. 18,010/= to the respondents Nos. 1 & 2 (claimants in M.A.C.P. No. 35 of 1979) together with interest thereon at the rate of 6% p.a. from the date of the petition till realisation and shall also pay the costs in proportion.

20. The appellant and respondent No.3, in First Appeal No. 127 of 1981 (opponents Nos. 2 & 1 in M.A.C.P. No. 36 of 1979) shall pay jointly and severally Rs. 18,050/= to respondent No.1 (claimant No.1 in M.A.C.P. No. 36 of 1979) together with interest thereon at the rate of 6% p.a. from the date of the petition till realisation and shall also pay the costs in proportion. Awards be drawn accordingly.

21. The appellant and respondent No.3 shall make the payment, if not made so far, within the period of two months from today.

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